

Application No. 10/005,930

REMARKS

With regard to the claim objections, while in disagreement in some respects, Applicants have amended the claims, it is believed, in accordance with the Examiner's suggestions, and therefore, the objections are believed to be alleviated.

The rejection of Claims 1 to 12, 15 to 18, 21 to 29, 31, 36 to 51 and 53 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,392,250 is respectfully traversed. The Examiner has not pointed out to Applicants where each and every feature, particularly the combination of the rejected claims are specifically illustrated in the '250 patent. However, based upon the Examiner's suggestion, Applicants are submitting herewith, as suggested by the Examiner, a Declaration signed by the listed inventors and stating that any invention disclosed but not claimed in U.S. Patent 6,392,250 was derived from an inventor or the present application, and is thus not the invention by another.

The rejection of Claims 1, 7, 8, 17 to 19, 21, 22, 25 to 29, 31 - 33, 37 to 39, 43, 45, 46 and 53 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,792,557 is respectfully traversed.

It is not believed that the Examiner has established a prima facie case of anticipation with respect to the '557 patent as the disclosure thereof is not believed to be applicable to the combination of components recited in the rejected claims including in Claim 1 the thermal protective element. With reference to column 115, lines 55 to 64, referred to by the Examiner, this disclose does not appear to refer to a thermal protective overcoating layer, nor does the aforementioned passage render obvious the combination of components present in the rejected claims, such as Claim 1, including a mixed region (3) together with a thermal protective element coated on one of the anodes or cathodes.

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With regard to Claims 37 and 38, it is believed that the arguments presented herein are equally applicable, reference the combination of components as recited in Claim 1, and moreover, as Claim 38 is dependent on Claim 37, Applicants will assume the position for the present response that the patentability of Claim 38 will depend primarily on the patentability of Claim 37.

Accordingly, it is not believed that the Examiner has established, as required by a number of CAFC decisions, that the claims being rejected in paragraph 6 of the Official Action under 35 U.S.C. 102(b) are anticipated by U.S. Patent 5,792,557.

The rejection of Claims 13, 14, 19 and 30 under 35 U.S.C. 103(a) as being unpatentable over Aziz et al. 6,392,250 is respectfully traversed. The Examiner's own apparent admission on page 8 of the Official Action that Aziz et al. fails to teach (per instant Claim 13) an embodiment of the device and that Aziz et al. does not teach porphyrins and multiple layer hole transport regions should be sufficient basis per se to render the present claims being rejected unobvious. Moreover, since Claims 13, 14, 19 and 30 are dependent claims, for the present response, Applicants will assume the position that the patentability of these claims will depend primarily on the patentability of the claims from which they depend.

The rejection of Claims 2 to 6, 9 to 16, 30, 40 to 42, 44, 47 and 49 to 51 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,792,557 is respectfully traversed. By some of the Examiner's own comments in paragraph 9, and with reference to column 115, lines 55 to 64, the Examiner has not pointed out specifically that a thermal protective layer is illustrated therein especially in combination with the other components recited in the rejected claims, thus these claims should be patentable. Moreover, for the purposes of this response Applicants will assume the position that since the claims being rejected in paragraph 9, page 9, of the Official Action are

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dependent claims, that the patentability thereof will depend primarily on the patentability of the claims from which they depend.

The rejection of Claims 23, 24, and 36 under 35 U.S.C. 103(b) as being unpatentable over U.S. Patent 5,792,557 in view of U.S. Publication 2002/0034659 A1 is respectfully traversed. The comments rendered herein with respect to the '557 patent continue to be applicable with respect to the rejection of these claims.

More specifically, since the primary reference is not believed to render the rejected claims obvious, it is believed that the combination rejection fails. Moreover, Applicants will assume the position for the purpose of the present response that since Claims 23, 24 and 26 are dependent claims, that the patentability thereof will reside primarily with the patentability of the claims from which they depend. Also, with further respect to the 2002/0034659 A1 publication, as the Examiner will appreciate, it is directed to a light emitting device containing a host material of the formula, for example, as illustrated in column 9, reference Claim 1, and also note Claims 5, 7, and 8, however, the Examiner has not established a prima facie case of obviousness with respect to this reference as applicable to each of the rejected Claims 23, 24 and 26. Further, this reference may not be properly combinable with the primary '557 patent, particularly without the benefit of the teachings of the present application, and additionally, there are a number of CAFC decisions indicating that one of ordinary skill in the art may not select certain portions of a reference and incorporate them into a primary reference without sufficient basis thereof, particularly when the technology is complex and unpredictable as mentioned herein.

With further respect to the 2002/0034659 A1 reference, the Examiner has not pointed out where in this reference the combination of components of the present invention are illustrated, and has not provided sufficient evidence that this reference is properly combinable with the '557

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patent, particularly without the benefit of the teachings of the present application. Moreover, the complexity and unpredictability of this art of organic devices as shown by the references themselves would lead one of ordinary skill in the art away from the present invention, and moreover, at the very least substantial undo experimentation would be needed after a review of the 2002/0034659 A1 reference to have one of ordinary skill in the art even consider a combination of these references.

Further, with regard to the rejection of Claims 20, 34, 35, 48 and 52 under 35 U.S.C. 103(b) as being unpatentable over U.S. Patent 5,792,557 in view of U.S. Publication 2001/0053462, see paragraph 11 of the Official Action, this rejection is traversed for the reasons indicated herein with regard to the '557 patent.

Moreover, the Examiner is not permitted to utilize a hindsight analysis approach and obvious to try approach, nor utilize the benefit of the teachings of the present application to arrive at the 35 U.S.C. 103(a) conclusions.

To further establish the unobviousness of the rejected claims, the Examiner is referred to the lab Examples and Comparative Examples and data presented in the '557 patent beginning at column 124, line 60, including the Comparative Examples beginning in column 128, line 51, and note, for example, column 129, beginning at line 35, Table 16, and the comment immediately following Table 16 with respect to the voltage and the breakdown of the element on the next day after 19 hours for the devices of the Comparative Examples 2 and 3. Similar information and data is also provided in the '557 patent. Therefore, in one aspect thereof it is believed demonstrated that this technology is complex and unpredictable, and one of ordinary skill in the art would not arrive at the present invention without undue experimentation, particularly without the benefit of the teachings of the present application.

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While the 2001/0053462 A1 publication suggests at paragraph 42, page 4, that a protective layer comprising silicon oxide, silicon dioxide, germanium oxide and the like may be provided on the outside of the cathode, the device of this reference includes a light emitting layer containing two or more different kinds of light emitting materials, and at least one of the two or more light emitting materials is an orthometallated complex. The importance of the orthometallated complex is illustrated in the teachings of the 2001/0053462 A1 publication, and particularly the Examples and Comparative Examples on page 5, beginning at paragraph 68, and note particularly paragraph 69, Comparative Example 2, wherein there was used a similar green light emitting material coumarin 6 in place of the complex of the parent invention of the 2001/0053462 A1 publication with the results as shown in the Table.

The double patenting rejections, reference paragraphs 12, 13, 14 and 15 of the Official Action, are respectfully traversed since it is not believed that the Examiner has established sufficient basis for such a rejection as a comparison of the claims being rejected with the reference applications will readily reveal. Nevertheless, Applicants are submitting herewith three Terminal Disclaimers whereby any patent resulting from the copending applications and the two patents indicated will expire simultaneously with the earliest expiration date of these documents.

The Examiner has raised a number of provisional obvious type double patenting rejections, and it is believed that the Examiner should focus perhaps on the date of the earliest application or patent being relied upon since, as the Examiner appreciates, a partial Terminal Disclaimer is not permitted wherein different claims are being rejected over a reference.

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In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby requested to call Eugene O. Palazzo, at Telephone Number 585-423-4687, Rochester, New York.

Respectfully submitted,



Eugene O. Palazzo
Attorney for Applicant(s)
Registration No. 20,881
(585) 423-4687

EOP/jah

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Xerox Corporation
Xerox Square 20A
Rochester, New York 14644